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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 IN RE:

8 DINO J. PETRONE and CONNIE L. PETRONE,
9 Debtor(s),

BK-09-32084-led
Chapter 7
Appeal Ref 16-55

10
11 U.S. BANK, N.A. and PHH MORTGAGE
SERVICES

Case No. 2:16-CV-2885 JCM (JCM)

12 Appellant(s)

ORDER

13 v.

14 SFR INVESTMENTS POOL 1, LLC,

15 Appellee(s).

16
17 Presently before the court is appellee SFR Investments Pool 1, LLC's ("SFR") motion to
18 dismiss. (ECF No. 10). Also before the court is appellee's motion to stay. (ECF No. 11).
19 Appellants U.S. Bank, N.A. ("U.S. Bank") and PHH Mortgage Services ("PHH") filed an
20 objection to both motions, (ECF No. 14), to which appellee replied. (ECF No. 15).

21 **I. Background**

22 The instant appeal is from a bankruptcy order that retroactively annulled an automatic stay.
23 On November 23, 2009, Dino Petrone and Connie Petrone ("debtors") filed a voluntary bankruptcy
24 petition under Chapter 7, case number 09-32084-lbr. (ECF No. 6 at 8). Among the property listed
25 in debtors' schedules was property commonly known as 5670 San Florentine Avenue, Las Vegas,
26 Nevada 89141 ("the property"). (*Id.* at 7–8.)

27 On December 8, 2009, PHH sought relief from the automatic stay as applied to the
28 property. (*Id.* at 8). The court granted PHH's motion for relief on February 19, 2010. (*Id.*). The

1 relief from the automatic stay applied to PHH, and did not apply to other parties possessing an
2 interest in the property. (ECF No. 1 at 7).

3 On March 5, 2010, 14 days after the court granted PHH's motion for relief, Southern
4 Highlands Community Association ("HOA") recorded a notice of delinquent assessment lien
5 against the property through its trustee, Alessi & Koenig ("HOA trustee"). (ECF No. 6 at 9). On
6 June 16, 2010, the HOA, through the HOA trustee, recorded a notice of default and election to sell.
7 (*Id.*). On August 14, 2012, the HOA, through the HOA trustee, recorded a notice of trustee's sale.
8 (*Id.*). On September 24, 2012, the HOA trustee recorded a trustee's deed upon sale, conveying the
9 property to SFR pursuant to a non-judicial foreclosure sale. (*Id.*).

10 On March 26, 2013, SFR filed a complaint in state court against U.S. Bank, seeking to
11 quiet title as to the property. (ECF No. 10 at 4). Sometime in 2016, U.S. Bank filed a motion for
12 summary judgment on the basis that the HOA foreclosure sale violated the automatic stay in
13 debtors' bankruptcy case. (*Id.* at 5).

14 On September 1, 2016, SFR filed a motion in bankruptcy court to retroactively annul the
15 automatic stay. (*Id.*). On December 5, 2016, the bankruptcy court entered an order granting
16 retroactive annulment of the automatic stay as applied to the HOA's notice of delinquent
17 assessment lien against the property. (ECF No. 1 at 3–11). U.S. Bank and PHH timely appealed
18 the order. (*Id.* at 1). Neither the debtors nor the bankruptcy trustee appealed the bankruptcy court's
19 order. (ECF No. 10 at 5).

20 On July 25, 2017, appellee filed a motion to dismiss U.S. Bank and PHH's appeal of the
21 bankruptcy court order. (ECF No. 10).

22 **II. Legal Standard**

23 Jurisdiction over an appeal from an order of a bankruptcy court is governed by 28 U.S.C.
24 § 158. *In re Rains*, 428 F.3d 893, 900 (9th Cir. 2005). A district court has jurisdiction to hear
25 appeals from "final judgments, orders, and decrees . . . and, with leave of the court, from
26 interlocutory orders and decrees, of bankruptcy judges." 28 U.S.C. § 158(a); *In re Rains*, 428 F.3d
27 at 900.

1 “Only those persons who are directly and adversely affected pecuniarily by an order of the
2 bankruptcy court have been held to have standing to appeal that order.” *Fondiller v. Robertson*
3 (*In re Fondiller*), 707 F.2d 441, 442 (9th Cir. 1983). In *Tilley v. Vucurevich* (*In re Pecan Groves*
4 *of Ariz.*), 951 F.2d 242 (9th Cir. 1991), the court held that “a creditor has no standing to appeal an
5 adverse decision regarding a violation of the automatic stay.” *Id.* at 245. The court further held
6 that lienholders “[do] not have standing in a bankruptcy proceeding to challenge actions as
7 violative of the stay.” *Id.*

8 **III. Discussion**

9 In its motion to dismiss, appellee claims that appellants lack standing to appeal pursuant to
10 *In re Pecan Groves*. (ECF No. 10 at 6). Appellants argue that *In re Pecan Groves* is
11 distinguishable on its facts, is premised on outdated law, and has been sharply criticized by other
12 courts. (ECF No. 14).

13 Appellants lack standing to appeal the order of the bankruptcy court. As related to the
14 bankruptcy of Dino and Connie Petrone, U.S. Bank and PHH were creditors of the estate who held
15 a lien against the property. Neither the trustee nor the debtors appealed the bankruptcy court’s
16 order. (ECF No. 10 at 5). This court is bound by the Ninth Circuit’s decision in *In re Pecan*
17 *Groves*. 951 F.2d at 245. As creditors with a lien against property of the estate, U.S. Bank and
18 PHH lack standing to challenge the bankruptcy order. *See id.*

19 Appellants’ arguments against the application of *In re Pecan Groves* to the instant appeal
20 are unpersuasive. Appellant correctly asserts that *In re Pecan Groves* was decided before the Ninth
21 Circuit held in *In re Schwartz*, 954 F.2d 569 (9th Cir. 1992), that acts in violation of the stay were
22 void *ab initio*. *Id.* at 571. However, appellants fail to persuade the court that the holding in *In re*
23 *Schwartz* makes the instant appeal legally distinguishable from *In re Pecan Groves*. Here,
24 similarly to *In re Pecan Groves*, a creditor is appealing a bankruptcy court order relating to the
25 automatic stay on debtors’ property that neither the debtors nor the trustee appealed. The rule
26 articulated in *In re Pecan Groves*, that creditors cannot appeal an adverse decision of the
27 bankruptcy court related to the automatic stay, governs this case. 951 F.2d at 245.

1 **IV. Conclusion**

2 Appellants, as creditors who possessed a lien against property of the bankruptcy estate,
3 lack standing to appeal the judgment of the bankruptcy court that retroactively annulled the
4 automatic stay.

5 Accordingly,

6 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that appellee's motion to
7 dismiss the appeal (ECF No. 10), be, and the same hereby is, GRANTED.

8 IT IS FURTHER ORDERED that appellee's motion to stay the appeal (ECF No. 11), be,
9 and the same hereby is, DENIED as moot.

10 DATED August 24, 2017.

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UNITED STATES DISTRICT JUDGE